

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1481, 78-1001

ORIGINAL

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Respondent,

against

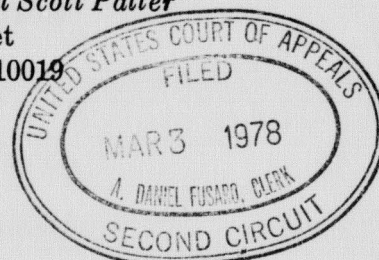
DANIEL SCOTT PALTER,

Appellant.

On Appeal from a Judgment of the
United States District Court
for the District of Connecticut

**APPENDIX FOR APPELLANT,
DANIEL SCOTT PALTER**

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for Appellant, Daniel Scott Palter
40 West 57th Street
New York, New York 10019
(212) 977-9700



PAGINATION AS IN ORIGINAL COPY

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DATE	DOCUMENT NO.	IV. PROCEEDINGS (Continued)	FILE NO.	Start Date and Date (a)	LV Code (c)	Tot. Day (d)
1977						
7/13		Notice of Readiness, filed by govt.				
7/13		Marshal's return showing service, filed: Summons.			2	
7/19		Envelope addressed to Atty. Ginsberg returned "addressee unknown".				
7/25		Court Reporter's Notes of Proceedings (plea) held on 7/5/77, filed. Russell, R.				
9/27		On RCZ's Jury Assignment List: Change of plea. Zampano, J. m-9/27/77				
" "		CHANGE OF PLEA: Deft. requests leave to change his plea of not guilty entered earlier to ct. two. Court grants request and orders previous plea erased from the record. Deft is put to plea again and pleads guilty to ct. two. Ct. one to be dismissed at the time of sentencing. Case continued on the same bond for sentencing on 11/1/77 at 10:00 A.M. Zampano, J. m-9/27/77.				
11/8		Disposition scheduled for 11/14/77 over to 11/21/77 at 10:00 A.M. Zampano, J. m-11/8/77				
11/21		DISPOSITION: Imprisonment 4 mos. on Count 2 plus 2 years special parole term; Count 1 dismissed by the Court on Mtn of U. S. Atty; Court recommends commitment to MCC, NY. If Deft is not incarcerated at MCC the Court will entertain a Mtn for reduction of sentence. Counsel moves to have sentence served on weekends. Execution stayed until the Court hears from the U. S. Probation Officer by a follow - up memo on or before 11/28/77. If the Court decides there is no change in sentence there will be no need for appearance. If there is a change the Court will set another hearing to resentence Deft. If there is no change the Deft will have to surrender himself on a voluntary basis. Zampano, J. m-11/22/77.				
11/21		JUDGMENT AND COMMITMENT : filed and entered. Zampano, J. m-11/28/77, copies distributed.				
12/5		Ruling on Motion to Serve Sentence on Weekends, filed and entered. Motion is denied. Zampano, J. m-12/5/77. copies mailed to counsel copies handed to U.S. Marshal.				
12/6		JS-3 mailed to A.O.				
12/6		Marshal's non est return, filed: Magistrate's Warrant of Arrest.				
12/8		Motion for Stay of Surrender Date, filed by deft.				
12/8		Appearance of H. William Shure, Esq. entered for deft.				

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER
12/9/77	66695	\$5.00 (appeal)			
12/15/77	Deposit: GF330	\$5.00			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

PALTER, DANIEL SCOTT

N-77-89

1

Yr.

Docket No.

Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1977	(Document No.)				
12/8	Motion for Stay of Surrender Date, endorsed: A stay of surrender date is granted until 12 noon, December 19, 1977. Further relief, if any, must be obtained from the Court of Appeals for the Second Circuit. Zampano, J. m-12/9/77. copies mailed to counsel and cert copies handed to U.S. Marshal.				
12/9	Notice of Appeal, filed by deft. certified copies of docket entries and notice of appeal mailed to Court of appeals, on 12/16/77				
12/13	Notice of Appeal, filed by deft.				
" "	Order, filed and entered: Ordered that pursuant to R 4(b) of F.R.A.P., the time to file a notice of Appeal from the Judgment of November 21, 1977 in the above captioned case is hereby extended; and, further, it is hereby Ordered that the defendant may file the Notice of Appeal nunc pro tunc to December 9, 1977. Zampano, J. m-12/13/77. copies mailed to counsel.				
12/27	Certified copy of Notice of Appeal, filed on 12/13/77 and docket entries together with Order filed on 12/13/77 mailed to Clerk, U.S.C.A.				

RECEIVED

FILED

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JUN 29 4 32 PM '77

U.S. ATTORNEY'S OFFICE
NEW HAVEN, CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

DANIEL SCOTT PALTER,
ANDY CASTRO and
OWEN BRADLEY DAVIES

CRIMINAL NO. N-77-89

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

From on or about May 16, 1974, to on or about June 21, 1977, in the District of Connecticut, DANIEL SCOTT PALTER, ANDY CASTRO and OWEN BRADLEY DAVIES knowingly and intentionally did unlawfully manufacture a quantity of amphetamine, a schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Sections 2(a) and 2(b).

COUNT TWO

From on or about May 16, 1974, to on or about June 21, 1977, in the District of Connecticut, and elsewhere, DANIEL SCOTT PALTER, ANDY CASTRO, OWEN BRADLEY DAVIES, co-conspirators and defendants herein, and EDGAR VELAZQUEZ, a co-conspirator but not a defendant herein, wilfully and knowingly did combine, conspire, confederate and agree together, with each other, and with diverse other persons whose names are to the Grand Jury presently unknown,

to knowingly and intentionally unlawfully manufacture a quantity of amphetamine, a schedule II non-narcotic controlled substance, and to knowingly and intentionally unlawfully manufacture and attempt to manufacture a quantity of methaqualone, a schedule II non-narcotic controlled substance in violation of Title 21, United States Code, Sections 841(a)(1) and 846 and Title 18, United States Code, Sections 2(a) and 2(b); all in violation of Title 21, United States Code, Section 846.

1. It was part of said conspiracy that the defendants and co-conspirators would and did purchase chemicals, supplies and equipment using the names Poly-Chem Service Company and Thompson Research Company from SGA Scientific, Inc., 735 Broad Street, Bloomfield, New Jersey, Macalaster Bicknell of Connecticut, Inc., New Haven, Connecticut, J. T. Baker Chemical Company, Phillipsburg, New Jersey, Ventron Corporation, Danvers, Massachusetts, and other suppliers.

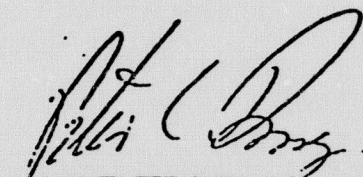
2. It was further a part of said conspiracy that the defendants and co-conspirators would and did utilize said chemicals, supplies and equipment to induce chemical reactions necessary to produce amphetamine and to convert said amphetamine to tablet form by means of a home-made pill press.

3. It was further a part of said conspiracy that the defendants and co-conspirators would and did purchase a quantity of a chemical, O-toluidine, from Macalaster Bicknell of Connecticut, Inc., New Haven, Connecticut and a tank of chlorine gas from

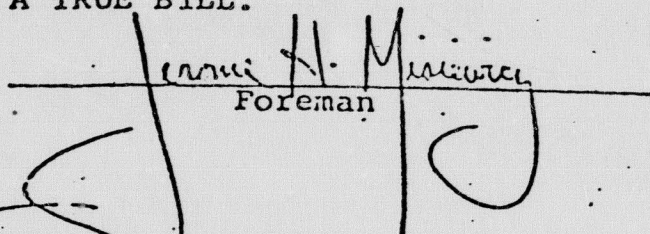
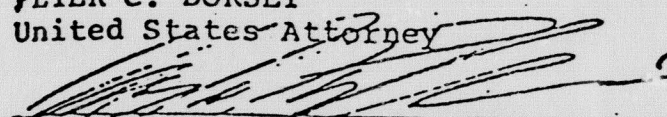
Cyro Dyne Corporation, New Haven, Connecticut in an attempt to induce chemical reactions necessary to produce methaqualone.

6

A TRUE BILL.



PETER C. DORSEY
United States Attorney


Foreman
HAROLD JAMES PICKERSTEIN
Chief Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----	x	
UNITED STATES OF AMERICA	:	
	:	
vs.	:	Criminal No.
	:	N-77-89
DANIEL SCOTT PALTER	:	
-----	x	

Federal Building
New Haven, Connecticut
September 27, 1977

B e f o r e :

HON. ROBERT C. ZAMPANO
Senior United States District Judge

A p p e a r a n c e s :

For the Government:

RICHARD BLUMENTHAL, ESQUIRE
P. O. Box 1824
New Haven, Connecticut 06508
By: H. J. Pickerstein, Esquire

Cunningham Reporting Service

REGISTERED PROFESSIONAL REPORTERS
1837 ASYLUM AVENUE
WEST HARTFORD, CONNECTICUT 06117

1 A p p e a r a n c e s (Continued) :

2 For the Defendant:

3 SHEILA GINZBERG, ESQUIRE
4 49 West 57th Street
5 New York, New York
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2 MR. PICKERSTEIN: Mr. Palter is
3 represented by Sheila Ginzberg.

4 The government anticipates a change
5 of plea as to Count Two of the indictment. Plea
6 negotiations have been reduced to written instrument,
7 executed by myself, the defendant and Miss Ginzberg.

8 THE COURT: How old is the defendant?

9 MR. PICKERSTEIN: Twenty-nine, your
10 Honor.

11 THE COURT: Mr. Palter, have you had an
12 opportunity to read this letter, and does your signa-
13 ture, which appears at the bottom of the letter,
14 indicate that you have read the letter and understand
15 its contents?

16 MR. PALTER: Yes, your Honor.

17 THE COURT: Mr. Palter, I'm going to ask
18 you some questions, and do you recognize that you must
19 answer those questions truthfully?

20 MR. PALTER: Yes.

21 THE COURT: Have you had a full and
22 adequate opportunity to discuss with your attorney
23 the nature of the charges against you in Count Two?

24 MR. PALTER: Yes, your Honor.

25 THE COURT: Do you have any questions
with regard to the nature of Count Two and with respect

1 to the change of plea?

10

2 MR. PALTER: No.

3 THE COURT: Do you understand that I
4 will not accept your change of plea if you claim to
5 be innocent?

6 MR. PALTER: Yes.

7 THE COURT: With respect to Count Two,
8 do you admit that on or about May 16, 1974, to June,
9 1977, in the District of Connecticut, you, Andy Castro
10 and Owen Bradley Davies, who are named as conspirators,
11 and Edgar Velazquez, a co-conspirator, but not a
12 defendant, willfully and knowingly did conspire and
13 agree together, and perhaps with other persons that
14 the Grand Jury did not know about, manufacture a
15 quantity of amphetamines, and knowingly and willfully
16 did manufacture and attempt to manufacture a quantity
17 of methaqualone, a Schedule II. narcotic, which would
18 be a violation of federal law, do you admit to that?

19 MR. PALTER: Yes, sir.

20 THE COURT: Do you have any reason to
21 believe that the government could not prove that the
22 defendant was part of a conspiracy, that the defendants,
23 including yourself and one Edgar Velzaquez, did
24 purchase chemicals, supplies and equipment used in
25 the name of Poly-Chem Service Company and Thompson

1 Research Company, East Haven, Connecticut; SCA
2 Scientific Corporation, Bloomfield, New Jersey;
3 Macallister Bicknell Company, New Haven; J. T. Baker
4 Chemical Company, New Jersey and Ventron Corporation
5 in Massachusetts.

6 Do you have any reason to believe that
7 the government could not prove that overt action?

8 MR. PALTER: No.

9 THE COURT: The government alleges that
10 it could prove that at least one of you did elicit
11 these chemicals to induce a chemical reaction necessary
12 to produce amphetamines and convert them to a tablet
13 form. Do you believe they could not prove that?

14 MR. PALTER: No.

15 THE COURT: With respect to the three
16 overt acts, the government states that it was part of
17 the conspiracy that you and your conspirators would,
18 and did, purchase a quantity of O-Toluidine from the
19 Macallister Bicknell firm of Connecticut and did
20 purchase a tank of chlorine gas from Cryo Dyne
21 Corporation of New Haven in an attempt to induce a
22 chemical reaction necessary to produce this methaqualone.

23 Do you admit that the government could
24 prove that?

25 MR. PALTER: Yes.

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1 THE COURT: You have generally told me
2 that you were guilty of the acts set forth in Count
3 Two, but I want to go over some of the essential
4 elements in a little bit more detail, to be sure that
5 you fully understand.

6 First of all, the government would have
7 to prove that you, Castro, Davies, the other named
8 and unnamed persons, involved in this conspiracy,
9 actually got together and either implicitly or expressly
10 agreed to commit these acts.

11 Now, the government does not have to
12 prove that you sat down and signed a contract or an
13 express agreement, but that this was an understanding
14 with you that you were involved in these acts. Do you
15 believe that the government could show that at trial?

16 MR. PALTER: Yes.

17 THE COURT: The government would have
18 to prove that you were not an innocent bystander, that
19 you had to act willfully and knowingly, that is, with
20 criminal intent, with a knowledge of what you were
21 doing, not because of some innocent mistake, even some
22 negligence or gross negligence; but that you went in
23 with eyes wide open; that these were criminal acts.
24 Do you agree that the government could show that at
25 trial?

MR. PALTER: Yes, your Honor.

THE COURT: Do you understand that you need not change your plea to Count Two, and if your plea of not guilty remained with respect to Count Two, you would have an immediate trial? Miss Ginsberg would represent you and the government would have to prove beyond a reasonable doubt each and every element at the trial. You would have a right to confront the government witnesses, and if you wish, you could call your own witnesses. By your change of plea, you are waiving your constitutional rights. Do you understand that?

MR. PALTER: Yes.

THE COURT: And you understand you are not going to have a trial?

MR. PALTER: Yes.

THE COURT: Is it of your free will?

MR. PALTER: Yes.

THE COURT: Has anyone tried to influence you or coerce you in this regard?

MR. PALTER: No.

THE COURT: You have agreed that you signed your name to the letter acknowledging what the plea negotiations were and your acceptance of them, but I would like, at least in substance, to go over

1 then.

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2 The government, in effect has offered
3 you the opportunity to change your plea to not guilty
4 on Count Two.

5 MR. PALTER: That is right.

6 THE COURT: The government agrees,
7 therefore, that Count One will be dismissed at the time
8 of sentencing. That was promised to you.

9 MR. PALTER: Yes.

10 THE COURT: Now, in exchange for that,
11 you have agreed to give your full cooperation to the
12 government, which would include truthful testimony
13 against Castro and Davies, who are the remaining
14 defendants in this case; moreover, the government
15 expects you to give complete and truthful information
16 as to all your activities with respect to the manu-
17 facture and distribution of controlled substances
18 encompassed during the period of the indictment.

19 MR. PALTER: Yes.

20 THE COURT: And the government, in
21 exchange, states that it would inform me, or the
22 sentencing court, of your cooperation. The government
23 has agreed to do that, is that your understanding?

24 MR. PALTER: Yes, sir.

25 THE COURT: The government goes on to

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1 state that no other promises have been made to you
2 or your attorney by Mr. Pickenstein or any agent or
3 officer of the United States government. Do you agree
4 to that?

5 MR. PALTER: Yes, sir.

6 THE COURT: The government made one
7 other promise to you. It stated that if you do
8 cooperate fully, it will not prosecute you for any
9 offense other than Count Two, for or on account of
10 any transaction or matter concerning Count Two which
11 you may testify to or give information to the govern-
12 ment and no such testimony or information can be used
13 against you in any court of law. You agree that the
14 government has offered you that promise?

15 MR. PALTER: Yes.

16 THE COURT: Have I covered all the
17 promises made to you?

18 MR. PALTER: Yes.

19 THE COURT: Have any promises been made
20 to you as to the exact term of punishment that will be
21 imposed upon you?

22 MR. PALTER: No.

23 THE COURT: Do you realize that you
24 could be punished for five years and fifteen thousand
25 dollars? Do you understand what the special parole

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1 plan is?

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2 MR. PALTER: Yes. That has been explained
3 to me.

4 THE COURT: Has it been explained to you
5 that in the two-year special parole plan that I must
6 impose a minimum, mandatory sentence; that I have to
7 do that?

8 MR. PALTER: Yes, sir.

9 THE COURT: Do you further understand
10 that if this special parole is revoked because of
11 violation, the original term shall be increased by a
12 period of the special parole?

13 MR. PALTER: Yes.

14 THE COURT: Do you understand that it
15 is not diminished by the time spent on the special
16 parole in the event the term of imprisonment is imposed.
17 Do you understand that?

18 MR. PALTER: Yes, sir.

19 THE COURT: Now, I would like to ask
20 Miss Ginzberg if you know any reason why the client
21 should not change his plea in Count Two?

22 MISS GINZBERG: No, your Honor.

23 THE COURT: Mr. Pickerstein, if the
24 government could prove the charges beyond a reasonable
25 doubt, and if so, what could they prove?

MR. FICKERSTON: The government would prove that during the month of September, 1972, the defendant Palter met the defendant Davies in Brooklyn, New York. At this time, we will prove that Palter and Davies had a discussion concerning the manufacture of amphetamine. We will prove that in April of 1973, the defendant Davies purchased a Parr hydragenator and various chemical precursors for amphetamine, using the name Rly-Chem Service Company, Westport, Connecticut. We will prove that in May, 1973, the defendant Davies attempted to make amphetamine at Palter's apartment in Queens, but that this attempt failed. We will prove that in June, 1973, Davies again attempted to manufacture amphetamine and again failed. We will prove that in August of 1973, the defendant Davies moved in with the defendant Palter in New York City, storing his laboratory equipment with his parents in Redding, Connecticut. We will prove that in July of 1973, the defendant Castro joined the group. We will prove that Castro's function in the group was to distribute the amphetamine. We will prove that in October and November, 1973, the defendant Davies successfully manufactured a quantity of amphetamines in Redding, Connecticut. We will prove that the defendant Davies and the defendant Palter then diluted

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the amphetamine powder and made it into capsules, which they then sold to Castro who in turn sold the amphetamine in New York City. We will prove that until the spring of 1974, Palter, Davies and Castro manufactured and distributed amphetamine producing a batch of amphetamine approximately once every two weeks. We will prove that in the spring of 1974, the operation ceased until December of 1974 when the defendant Davies again began making amphetamines in Milford, Connecticut. We will prove that from December, 1974, until March, 1975, Davies manufactured amphetamines producing a batch approximately once every two weeks. We will prove that during this period of time, Davies sold the amphetamines directly to the defendant Castro, who then distributed them. We will also prove that during this period of time, the ingredients and precursors were obtained using the name Poly-Chem Service Company.

We will prove that in June, 1976, Palter re-established contact with Davies and at this time the defendant Castro introduced his cousin, one Edgar Velazquez to the group.

We will prove that in September and October, 1976, Castro and Velazquez rented a house in Bridgeport, Connecticut and attempted unsuccessfully

1 to manufacture amphetamine.

2 We will prove that in January, 1977,
3 Velazquez rented a house located at 126 Cosey Beach
4 Road, East Haven, Connecticut, for purposes of a
5 laboratory to produce amphetamines.

6 We will prove that from January to
7 April, 1977, Velazquez manufactured approximately
8 one hundred grams of amphetamine a week which he
9 then gave to defendant Castro who sold it. During
10 this period of time we will prove that both Castro,
11 Palter and Velazquez obtained a necessary precursor,
12 lithium aluminium hydride, from SGA Scientific
13 Corporation in New Jersey.

14 We will prove that in April, 1977, the
15 defendant Davies attempted to purchase lithium aluminium
16 hydride from Ventron Corporation in Massachusetts but
17 that Ventron did not deliver the lithium aluminium
18 hydride.

19 We will prove that during this entire
20 period of time the sole purpose of Poly-Chem Service
21 Company was to provide a corporation to establish
22 the ingredients from amphetamine.

23 We will prove that on April 15, 1977,
24 Davies telephonically contacted Ventron Corporation
25 and inquired about amounts and prices for lithium

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aluminium hydride, representing that he was from Poly-Chem Service Company, 186 Cosey Beach Avenue, East Haven. We will prove that on April 20, 1977, Davies, representing Poly-Chem Service Company, 186 Cosey Beach Road, East Haven, contacted Ecote Mineral Company, Philadelphia, Pennsylvania, and inquired about lithium aluminium hydride.

We will prove that on April 19, 1977, representatives of Poly-Chem Service Company, East Haven, Connecticut, purchased solvents, including ether and alcohol.

We will prove that on February 23, 1977, Edgar Velazquez, representing Poly-Chem Service Company, had purchased ether and lithium aluminium hydride at SGA Scientific, Bloomfield, New Jersey.

We will further prove that on March 24, 1977, Velazquez purchased ten pints of ether for Poly-Chem Service from SGA Scientific.

We will prove that on May 11, 1977, the defendant Palter, using his own name and personal check, purchased two hundred grams of lithium aluminium hydride at SGA Scientific, Bloomfield, New Jersey.

Palter, at this time, was accompanied by the defendant Castro, and they indicated that the name Poly-Chem Service was being changed to Thompson Research Company,

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1 186 Cosey Beach Road, East Haven, Connecticut.

2 We will prove that on June 21, 1977,
3 federal agents executed a search warrant at the
4 premises located at 186 Cosey Beach Avenue, East Haven,
5 Connecticut, and found the defendant Castro on the
6 premises. The search of the premises disclosed a
7 laboratory for the manufacture of amphetamine, and
8 produced a quantity of amphetamine that had been
9 manufactured there.

10 The government will also introduce a
11 tape recording of a telephone conversation between
12 Velazquez and the defendant Davies wherein Velazquez
13 inquires of Davies as to certain problems that he was
14 having with the synthesis, and Davies gives him
15 advice as to the synthesis.

16 The government will prove that on June
17 20, 1977, Palter and Castro met at the 186 Cosey Beach
18 Road address in East Haven. We will show that they
19 left the premises, and went to Macallister Bicknell
20 Company in New Haven, where they purchased a quantity
21 of O-toluidine. We will also show that they purchased
22 a cylinder of chlorine gas. They then returned to
23 the house. We will show that O-toluidine and chlorine
24 gas are chemical precursors for methaqualone, a
25 Schedule II. controlled substance.

1 We will show that when the search
2 warrant was executed, stationery, bearing the name
3 Thompson Research Company, 186 Cosey Beach Road, East
4 Haven, Connecticut, and showing a billing address as
5 Palter's address in New York. We will also show conver-
6 sations on that date between Castro, Palter and
7 Velazquez concerning the manufacture of amphetamines.

8 Finally, the government will prove that
9 lithium aluminium hydride is an essential ingredient
10 to the manufacture of amphetamines, as is ether.

11 THE COURT: The government has reviewed,
12 in general, its case against you, Mr. Palter. Do you
13 have, or does your attorney have, any reason to
14 believe that the government could not prove what it
15 has stated it intended to prove at trial, but mostly
16 with respect to your participation? Is there anything
17 that needs commenting on in the way of denial.

18 MR. PALTER: No.

19 THE COURT: The plea of not guilty is
20 erased and the defendant may be put to plea to Count
21 Two, and if he is found guilty, it is a voluntary
22 plea.

23 THE CLERK: United States of America
24 versus Daniel Scott Palter, Criminal Case Number
25 N-77-89, as to Count Two of the indictment, how do

1 you plead?

2 MR. PALTER: Guilty.

3 THE COURT: Is there a problem on bond?

4 MR. PICKERSTEIN: Bond at large on
5 ten thousand dollars personal recognizance. Travel
6 limited to New York and Connecticut.

7 THE COURT: The same bond will be
8 continued. Sentencing will be November 1st.

9 (Whereupon, the witness was excused
10 and the hearing was concluded.)

11
12
13 CERTIFICATE

14 I hereby certify that the foregoing 17 pages
15 are a complete and accurate transcription of my stenotype
16 notes taken in the case of the United States of America
17 vs. Daniel Scott Palter, Criminal No. N-77-89, in the United
18 States District Court for the District of Connecticut which
19 was held in the Federal Building, New Haven, Connecticut,
20 on September 27, 1977, before the Hon. Robert C. Zampano,
21 Senior United States District Judge.

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23
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Anne Marie Ruby
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

- - - - - x
UNITED STATES OF AMERICA, :
Plaintiff, :
vs. : Criminal N-77-89
DANIEL SCOTT PALTER, :
Defendant. :

- - - - - x

Federal Building
Third Floor Courtroom
New Haven, Connecticut

November 21, 1977

B e f o r e :

The Honorable ROBERT C. ZAMPANO
Senior United States District Judge

A p p e a r a n c e s :

For the Plaintiff:

H. JAMES PICKERSTEIN
P. O. Box 1824
New Haven, Connecticut 06508

For the Defendant:

SHEILA GINZBERG
40 West 57th Street
New York, New York

MR. PICKERSTEIN: The first matter on the calendar this morning is Criminal No. N-77-89, United States of America against Daniel Scott Palter. Mr. Palter is represented by Attorney Sheila Ginzberg.

The Government has no comments other than what has been placed in the record.

THE COURT: Well, the sentencing in that case involves actually three persons, Messrs. Castro, Palter and Davies, and I know the attorneys are concerned that there might be some information supplied to the Court in camera discussions with the Probation Officer or an in-camera memorandum or a confidential memorandum. So I will disclose to all three attorneys that the discussions through the confidential pages and the in-camera conference with the Court consists of almost what is in the Pre-sentence Reports that have been available to counsel. I haven't compared the official statements word for word in each of the Pre-sentence Reports, but I think they're all identical with respect to the various alleged roles of the defendants.

As I recollect, the defendant Palter was

more in the management type of situation, he was there throughout the entire operation.

Davies was the chemist who was in the operation for a while and left, came back, was not part of the Castro-Velazquez operation, and Castro was more in the selling end of the operation.

Nothing the Probation Officer told me varies from that, and there is nothing the Probation Officer told me with respect to roles that is not disclosed in the Pre-sentence Report. In other words, if you are concerned that there is some information that I have that differs from what you have read in the Pre-sentence Report, clear your mind of that because that is not part of any record that I have seen or anything that has been disclosed to me.

All right. I will hear counsel with respect to Mr. Palter.

MS. GINZBERG: I know that Your Honor has my Pre-sentence Memorandum, and I think at this late date there is little purpose to be served in my detailing the crime and Mr. Palter's involvement in it.

I only wish that at this juncture I had

the ability to communicate to Your Honor what Mr. Palter has been through in the past five months. As Your Honor knows, he is a first offender. This is his first involvement with the criminal law, and I can tell you from my frequent contact with him over this period that the anxiety and the misery that he has felt is enormous. He has watched his life in large measure and in many respects fall apart. He has watched his wife suffer because of the stupidity of his involvement in this scheme. He has watched his parents who have been with him throughout this suffer immeasurably because they see their eldest son who in many respects certainly in school has functioned well and has always had such promise, suddenly throw his life away.

As Your Honor knows, upon sentence and conviction for this crime, Mr. Palter will be automatically disbarred from the practice of law in New York.

Now, he has yet to date to practice law, but I know from my discussions with him and the very fact that he has continued in his study of law that at some point in the future he had

hoped to practice law. That, obviously, is a possibility that is forever precluded by these proceedings.

Mr. Palter throughout the difficulty of these months and when as I said, he watched his life fall apart, has at the same time or on the other hand, done what he could to recoup those losses. He has cooperated fully with the Government, and he did so at the very early stages of this prosecution. I believe the details of his cooperation are set forth both in Mr. Pickerstein's letter to this Court and in my Pre-sentence Memorandum.

He has also embarked upon a very thorough, intensive and constructive therapy proceeding. He is seeing a psychiatrist or a psychologist three times a week, and she reports that he is making substantial progress.

I think by these actions Mr. Palter shows recognition of the wrongfulness of his conduct and also a determination to set himself right, to do what he can to set himself right.

There is no question, Your Honor, that this is a serious offense, and I know that Mr. Palter recognizes it as such, but this was his first

mistake and he will, Your Honor, never, ever engage in any kind of similar conduct or any criminal activity again. I feel certain in assuring you of that fact.

We ask only in light of his cooperation and in light of his on-going therapy that Your Honor be merciful and place him on probation so that he can continue in this therapy and make himself a productive member of society once again.

THE COURT: Mr. Palter, would you like to say anything in your own behalf?

MR. PALTER: May I?

THE COURT: By all means. Take your time.

MR. PALTER: Your Honor, I don't quite know what to say or how to say it, but what I did was wrong, and I have humiliated my parents and I have hurt my wife who I deeply love, and it was wrong, and I shouldn't have done it. If I could undo it, I would, but I can't, and I did do it, and I am sorry, and I have tried to make amends, and I hope you will be merciful.

THE COURT: Well, it is obvious we have here facially what appears to be a large drug conspiracy with all the indicia of a plan to sell

these drugs on a large scale and at huge profits.

I could list all the factors, but they're in the Pre-sentence Report from the stationery down to the equipment, down to the planning areas. However, as you delve into it and look at the people that were involved, particularly Mr. Palter, you get somewhat of a different rationale for the operation.

I think each of them had perhaps a different motive and different purpose. I think Mr. Palter's case is a sad one. He has outstanding mental capacity, but he is suffering from severe psychological problems. I don't think it serves any useful purpose to put the findings of the psychiatrist on the record. Counsel has seen them, I have seen them, the Probation Officer has seen them. So we do get a picture of a man that is somewhat different than one would think when you read the official version of the crime. He, however, was in this operation all the way through, and he was a part of it and, of course, he is a lawyer, which on the one hand, compounds in my mind his culpability.

On the other, it shows that he had to be more psychologically disturbed than one would

think because a lawyer would never get himself involved in this type of operation for the reasons that Mr. Palter apparently did.

On the credit side, of course, is his cooperation. There is no dispute about that. He gave a full and open disclosure of his role and the roles of the others, and the Government appreciates that and has sent me letters, I think at least two, highlighting the fact that Mr. Palter did come forward and was most cooperative.

I think all these factors save Mr. Palter quite a bit of time of incarceration, but I just can't overlook the fact and put him on probation, and particularly since he was in it so long and he had this legal training and has this mental ability.

What I have decided to do is give him a sentence, but it must be served in the Metropolitan Correctional Center in New York City where I know he will be in a different type of atmosphere than a regular prison or correctional center.

I don't see any reason why psychiatric help can't continue there. If he is not incarcerated

in the Metropolitan Correctional Center, and I only can recommend it, I can't order it, I will entertain a motion for reduction of sentence.

Under all the circumstances it is adjudged that the defendant is hereby committed to the custody of the Attorney General as authorized representative for a period of four months to be followed by two years special parole term.

The Court strongly recommends the Metropolitan Correctional Center in New York City. If the defendant is not incarcerated there, I will entertain a motion for reduction of sentence. I am not sure how I will act on it, but I want to make sure that he is not put in a regular prison or one of the usual correctional centers. I understand the Metropolitan Correctional Center has the facilities and the ability to handle someone with Mr. Palter's background.

MS. GINZBERG: Your Honor, may I suggest that Your Honor consider the possibility of Mr. Palter serving this sentence on week-ends so that he can continue with the therapy that he has already begun? I am formally with the Federal Defender Services Unit in New York City, and I am fully familiar with the facilities

that are available at H.C.C., and although much of them look good on paper, I know that they have no psycho therapy facilities at H.C.C. They are over-crowded, and they give no medical attention at all to the inmates.

If Mr. Palter were to serve this sentence on week-ends, he could continue with the therapy that has already begun, he could continue to support his wife who is completely financially dependent on this man.

THE COURT: Well, I think what I prefer to do is delay the surrender of Mr. Palter. I prefer to have your comments relayed to the Probation Officer and have the Probation Officer give me a report as to the advantages or disadvantages of week-end service. I am just not familiar with that type of sentence, and also with respect to your comments that he would not be able to receive the psychiatric help if he were there full time.

So on or before November 28th I will expect a follow-up memorandum from the Probation Officer with respect to how the sentence should be served. If there is to be no change in the sentence I impose today, there is no need for an

appearance by the defendant. If there is to be a change in the manner in which the sentence is to be served, I will set down another hearing so that I can resentence the defendant.

So what we will do is by the 28th I should have some sort of a memo, I will read it over, and you may submit anything you want also to me.

MS. GINZBERG: Thank you.

THE COURT: But I want the Probation Officer also to submit a recommendation on this, and then if I want to change the sentence, I will let you know and you can come in at a convenient time after the 28th. If I don't change the sentence, I will let you know, and he will have to surrender himself on a voluntary surrender program, and I will inform counsel of the time and place.

MS. GINZBERG: Thank you, Your Honor. Will you entertain a motion to dismiss Count One?

MR. PICKERSTEIN: At this time the Government would move to dismiss Count One. I have made up a written motion.

THE COURT: Yes. The motion is granted.

THE MARSHAL: Did you want to obtain a

designation in the entry?

THE COURT: Can you?

THE MARSHAL: Yes.

THE COURT: Yes. I would like to know if
the M.C.C. is willing to take him.

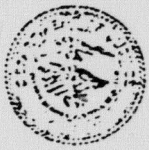
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CERTIFICATE

I hereby certify that the foregoing
13 pages are a complete and accurate transcription of my
original shorthand notes of the case of United States of
America versus Daniel Scott Palter, Criminal No. N-77-89,
held before The Honorable Robert C. Zampano in New Haven,
Connecticut, on November 21, 1977.



Carol J. Beecher, C.S.R.
Official Court Reporter



United States Department of Justice

37

UNITED STATES ATTORNEY

DISTRICT OF CONNECTICUT
270 ORANGE STREET
P. O. Box 1824

NEW HAVEN, CONNECTICUT 06508

TELEPHONE 432-2108
AREA CODE 203
FTS: 643-8108

IN REPLY REFER TO

November 14, 1977

Honorable Robert C. Zampano
United States District Judge
U. S. Post Office
141 Church Street
New Haven, Connecticut 06510

Re: United States v. Daniel Scott Palter, Et al
Criminal No. N 77-89

Dear Judge Zampano:

This letter is being written to advise you of the nature of the cooperation that the defendant Daniel Scott Palter has given to the Government in the above-captioned case. This is pursuant to the Government's obligation, which was spread upon the record at the time Palter entered his plea of guilty, to advise you as to the extent of Palter's cooperation.

Daniel Scott Palter was arrested pursuant to a federal arrest warrant on June 23, 1977. Thereafter, the grand jury sitting at New Haven, Connecticut, returned a two-count indictment on June 30, 1977, charging Palter, Owen Bradley Davies and Andy Castro, with manufacturing amphetamines, a Schedule II non-narcotic controlled substance, in violation of 21 USC Section 841(a)(1), and with conspiracy to manufacture amphetamines and methaqualone, both Schedule II non-narcotic controlled substances, in violation of 21 USC Section 846. On July 13, 1977, counsel for Palter met in this office with me, and the Government made disclosure of the evidence available to it. This included tape recordings of Palter's conversations with the co-defendants. Immediately thereafter, without filing any formal motions, Palter agreed to cooperate fully with the Government and to enter a plea to one count of the indictment. The Government agreed to make the full extent of Palter's cooperation known to the sentencing judge. This agreement is incorporated in a letter dated Sept. 27, 1977, a copy of which is attached hereto.

Palter has met both with the undersigned and with agents of the Drug Enforcement Administration on several occasions since that time. At these meetings, Palter has detailed fully not only his own participation in the manufacture of amphetamines and methaqualone, but also the participation of the other defendants. He has also detailed the participation of certain other individuals, not named as defendants in the indictment,

2. Honorable Robert C. Zampano

November 14, 1977

Re: United States v. Palter, Et al
Criminal No. H 77-89

whose identity was unknown to the Government prior to the time of Palter's cooperation. We believe that his disclosures have been complete, truthful and candid.

Based largely upon the statements that Palter has given to the Government, the other two defendants in this case, Davies and Castro, made decisions to enter pleas of guilty to the charges pending against them. We believe that without Palter's cooperation, these defendants may well have decided to go to trial on these charges, although we believe that the Government had overwhelming evidence of guilt with respect to all defendants. In any event, we believe that Palter's statements and his cooperation with the Government substantially strengthened our case against his co-defendants.

Additionally, Palter's cooperation has given the Government information, hitherto unknown, concerning other individuals who were involved with these defendants both in the manufacture and distribution of controlled substances. We believe that his cooperation will give rise to other potential cases against these individuals.

There is no question but that Palter has given his full and truthful cooperation to the Government in this matter. Not only has he provided additional significant evidence against both Castro and Davies, but he has also provided significant evidence against others, whose very existence was unknown to the Government before Palter began cooperating.

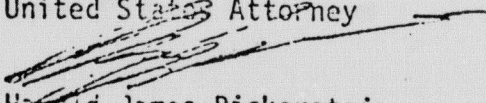
We further believe that based upon the evidence available to the Government in this case, Palter's involvement in these actions was based primarily out of his friendship with the other defendants. Proof as it now stands indicates that Palter realized no profit from these transactions. Nor does it appear that Palter was the financier of this operation.

In view of Palter's cooperation in this case, and in view of his psychiatric prognosis, we urge the Court to give Palter every consideration with respect to sentencing.

We have attached hereto a copy of Palter's statement to the Government for your information.

Sincerely,

Richard Blumenthal
United States Attorney



Harold James Pickerstein
Chief Assistant U. S. Attorney

HJP/hmg

Encl.

cc: Sheila Ginsberg, Attorney at Law
David Pond, U. S. Probation Officer

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

DANIEL SCOTT PALTER, :

Defendant. :

-----X

PRESENTENCE MEMORANDUM
ON BEHALF OF DANIEL SCOTT PALTER

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
COUNSELORS AT LAW
40 WEST 57TH STREET
NEW YORK, N. Y. 10019

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

DANIEL SCOTT PALTER, :

Defendant. :

-----x

PRESENTENCE MEMORANDUM
ON BEHALF OF DANIEL SCOTT PALTER

PRELIMINARY STATEMENT

This presentence memorandum is submitted on behalf of Daniel Scott Palter, pursuant to Rule 32, Fed. R. Crim. P.

On September 27, 1977 Mr. Palter pleaded guilty to Count Two of Indictment # N 77-89 which charged Owen Bradley Davies, Andy Castro and Daniel Scott Palter with conspiracy to manufacture amphetamines in violation of 21 U.S.C. §846*. The sentencing is scheduled for November 2, 1977.

This memorandum incorporates psychiatric reports from Dr. Marjorie White (Exhibit A), Dr. Lawrence Kaplan (Exhibit B), and a September 27, 1977 letter from Assistant United States Attorney James Pickerstein (Exhibit C). In addition, reference will be made to the United States Attorney's November 14, 1977 letter to the Court.

*Pursuant to agreement with the Prosecutor, Count One of the indictment which charges the substantive offense in violation of 21 U.S.C. §841(1)(a) will be dismissed at the time of sentence.

These documents are all particularly important on the sentencing in this case as the Presentencing Report of the United States Probation Office is inaccurate and, as a result, unfair in very material respects. It is respectfully submitted that on the relevant facts of this case -- Mr. Palter's cooperation, his psychiatric problems, the absence of venal motivation for the crime, and the fact that this is his first offense -- a term of probation pursuant to 18 U.S.C. §3651 would be consistent with the needs of justice.

RELEVANT FACTS

a) Mr. Palter's Cooperation with the Government

The Government describes Mr. Palter's cooperation as "complete, truthful and candid" and "largely" responsible for the decision of his co-defendants, Owen Bradley Davies and Andy Castro, to plead guilty.* Indeed, although the presentence report unfairly fails to credit Mr. Palter, the government's "version of the facts" cited in the report is, verbatim, the account provided by Mr. Palter.

Early in the history of this prosecution Mr. Palter decided to cooperate with the government. Toward that end, Mr. Palter met with Assistant United States Attorney James Pickerstein, and Drug Enforcement Agents to detail for them the participants and the scope of the scheme to manufacture amphetamines.

* The November 14, 1977 letter of AUSA James Pickerstein (hereinafter the Pickerstein Letter) at 2.

In all there were two meetings with government agents -- one in New Haven and one in Greenwich -- and several lengthy telephone conversations in which specific persons, dates and places previously unknown to the government were revealed.

Specifically, it was Mr. Palter who revealed when the manufacture of the amphetamines actually began in 1973, described the sporadic phases of chemical purchases and production and identified the participants in each stage of the operation. Prior to his cooperation the government's live testimony was limited to that provided by Edgar Velasquez (an unindicted co-conspirator) whose knowledge of the scheme did not extend back before the Spring of 1976. Consequently Velasquez had only been able to tell the government about the most recent phase of the scheme (December 1976-June 1977) but he was unable to impart any first-hand knowledge of earlier activities in which Owen Bradley Davies and others had played significant roles.

Indeed, without Mr. Palter's evidence the government's case against Davies was not strong. Mr. Palter's cooperation filled this void. He described how Davies had developed the formula for producing amphetamines, he enumerated, and described the succession of attempts to make the drug. Significantly, he provided the government with corroborating tangible evidence of Davies' participation -- a letter from Davies and a formula for drug manufacture in Davies' own handwriting.

Moreover, Mr. Palter's cooperation was not limited to evidence incriminating to Davies. At great personal and emotional

expense, Mr. Palter provided the government with evidence inculpat-
ing Andy Castro, who, over the years had become Mr. Palter's
closest friend. In addition, he revealed the identity and provided
physical descriptions of four other individuals -- Janice Bryans,
Gary Green, Angel Rodriguez and Claudia Lagalla -- all of whom,
unbeknownst to the government, had been actively involved in the
scheme.

This evidence has been particularly helpful to the
government. It has inspired new investigations which the govern-
ment believes will give rise to other prosecutions, and it has
provided critical evidence essential to the prosecution of Davies
and Castro. The significance of Mr. Palter's cooperation is set
forth in detail by Assistant United States Attorney Pickerstein in
his letter to the Court:

"Based largely upon the statements that
Palter has given the Government, the other
two defendants in this case, Davies and Castro,
made decisions to enter pleas of guilty to the
charges pending against them. We believe that
without Palter's cooperation, these defendants
may well have decided to go to trial on these
charges, although we believe that the Government
has overwhelming evidence of guilty with respect
to all defendants. In any event, we believe that
Palter's statements and his cooperation with the
Government substantially strengthened our case
against his co-defendants.

"Additionally, Palter's cooperation has
given the Government information, hitherto unknown,
concerning other individuals who were involved
with these defendants both in the manufacture and
distribution of controlled substances. We believe
that his cooperation will give rise to other
potential cases against these individuals."

(Pickerstein letter at 2)

b) Mr. Palter's Involvement in the Crime

The government's position is that the amphetamine operation involved here was not a large one and that Scott Palter's participation was inspired by a desire for friendship, not financial gain. Indeed, the government acknowledges that Mr. Palter did not profit in any way by his participation in the scheme.

Specifically, Assistant United States Attorney Pickerstein states in his letter to the Court:

"We further believe that based upon the evidence available to the Government in this case, Palter's involvement in these actions was based primarily out of his friendship with the other defendants. Proof as it now stands indicates that Palter realized no profit from these transactions. Nor does it appear that Palter was the financier of this operation."

(Pickerstein Letter at 2)

In this context, the allegations in the presentence report that Mr. Palter was "the financier and planner" of the operation (Presentence Report at 12) and that in June 1977 the operation was capable of producing 100,000 dosages a month (Probation Report at 3), are materially inaccurate and, thus basically unfair.

According to the government's own evidence, this loosely knit conspiracy was a "small time" operation which produced insubstantial quantities of amphetamines and then only sporadically. Beginning in May, 1973, when Davies first attempted to make amphetamines, there were long lapses (May 1973 to November 1973; Spring 1974 to December 1974; and June 1975 to November 1976) when the

group lost interest in the enterprise or when the chemical process totally failed. Moreover, working at optimum capacity, this group could not have come close to producing the probation report's projected 100,000 dosages a month. The operation simply did not have the equipment or the amount of chemicals necessary for such an enterprise.

While at times Mr. Palter aided in production of the amphetamines, his function in the operation was clearly peripheral. Unlike both Davies and Castro who had specialized skills -- chemist and distributor, respectively -- Mr. Palter brought no expertise to the operation. The government recognized this and, moreover, based on the evidence in its files, it specifically rejected the theory that Palter was the "financier". Mr. Palter has explained that his role was one of confidant to both Davies and Castro and peace-maker between the two. He was motivated not by any venality, but by deep-seated emotional problems, loneliness, and a desire only to help Andy Castro and keep him as a friend.

c) Mr. Palter's Psychiatric and Emotional Problems

All parties agree that Scott Palter's involvement in the crime was due to severe psychiatric and emotional problems (Letter of Assistant United States Attorney Pickerstein at 2; Presentence Report at 13).

Mr. Palter's psychiatric history goes back several years. In 1971 when he was depressed and suicidal, he was in

therapy with a psychiatric social worker at the Stanford University Health Clinic. As early as the age of 4-1/2, he was isolated and lonely and had trouble relating to his peers (Exhibit A at 1; Exhibit B at 1).

Dr. Marjorie Taggert White, who is Mr. Palter's treating psychologist* diagnosis Mr. Palter as a "[c]hronic depressive with suicidal tendencies (Exhibit A at 1). Dr. White describes Mr. Palter as a lonely and isolated young man whose "low self-esteem" and "constitutional predisposition to obesity" impeded his ability to socialize with his peers. Dr. White reports that Mr. Palter has always viewed suicide as a way out of seemingly insurmountable difficulties. In fact, between the ages of 20-22 Mr. Palter became so depressed that he made several attempts to kill himself by ingesting combinations of alcohol and tranquilizers and in one, almost fatal attempt, by ingesting rat poison (Exhibit A at 2).

As for Mr. Palter's involvement with Davies and Castro, Dr. White explains:

"At this time, however, in 1972, Mr. Palter not only felt disillusioned and suicidal over the collapse of his plans in regard to the Army and law; he was also struggling with the final breakup of his six-year relationship with the hysterical young woman who had driven him to take rat poison. In this hopeless state of mind, he was highly vulnerable to the approaches of friends involved in the drug business whom he met at parties. They saw his wide-ranging intelligence as an asset they could use, and they shrewdly estimated his life-long need for esteem and friendship. He found himself slipping into dubious

* Dr. White meets Mr. Palter three times weekly and has done so since August of this year.

business arrangements with them. The chronic depressive has a desperate need to be part of something as a way of preserving life because, to feel like a perpetual outsider, can be an overpowering invitation to suicide."

As to the probable effects of any incarceration on Mr. Palter, Dr. White predicted that:

"In my professional judgment, incarceration in prison will confront Mr. Palter with a very high risk, not only to his psychological rehabilitation, but to his very survival. Given his long-standing vulnerability, both physical and psychological, to the usual assaults and setbacks arising in human relations, the kind of destructive pressures that he will inevitably be subjected to by other prisoners can only catapult him back into chronic depression. Since prisoners' activities cannot be closely controlled on a constant basis, especially given contemporary conditions, I believe there is great probability that Mr. Palter will, as he has often before, seek suicide as a way out of intolerable depression at being the butt of others' cruelty. It is absolutely inevitable that the fact of incarceration itself will only confirm his life-long conviction of hopelessness."

(Exhibit A at 2)

This prognosis is confirmed by Dr. Lawrence Kaplan, a psychiatrist who examined Scott Palter three times in August of 1977. Dr. Kaplan stated:

"This young man is undoubtedly suffering from a schizo-affective disorder, with characterological manifestations. He has a rather strange and detached affect, is self-deprecatory, at the same time that he is grandiose in other areas, and this mixed grandiosity appears to be the result of an obviously disturbed and deficient ego function. His involvement in the charges against him appears to be the result of a significant and prolonged personality disorder.

"Although there is no overt evidence of psychosis at this time, the prognosis must be seriously guarded, particularly with his history of suicidal depression, as well as a family history of another suicide. I would venture the opinion that incarceration would be a serious threat to this patient's survival, both from the point of view of his psychosexual confusion and his schizo-affective disorder, and would seriously recommend continued supportive psychotherapy."

(Exhibit B at 3-4)

d) The Effect of the Conviction on Mr. Palter's License to Practice Law

Upon entry of conviction in this case, Mr. Palter will be automatically disbarred from the practice of law, and precluded from ever applying for readmission. Matter of Chu, ___ N.Y.2d ___ N.Y.L.J. Oct. 19, 1977 p.1, col.6. Matter of Chu, supra, which changed the law in New York, has a devastating effect on Mr. Palter's professional future. Prior to the Chu decision, a federal felony conviction would not result in automatic disbarment if the crime were not a felony under the laws of New York. Therefore, under the old law, Mr. Palter would not have been automatically disbarred because conspiracy to manufacture amphetamines is, under the law of New York, a Class B misdemeanor. While prior to Chu, Mr. Palter, with the aid of Assistant United States Attorney Pickerstein (see Exhibit C), had intended to defend against disbarment, that opportunity is no longer available to him.

e) Mr. Palter's Personal History and Background

(i) Mr. Palter is 29 years old. He graduated cum laude and with high honors from Dartmouth College in 1969 and from Stanford Law School in 1973. He is currently enrolled as an evening student in the Masters Taxation Program at New York University Law School.

Although Mr. Palter was admitted to the Bar of the State of New York in October, 1973 he has never practiced law. After graduation from law school he worked at Bucci Imports, Inc., his parents' shoe importing company. In 1974, Mr. Palter left Bucci, and became an editor at Prentice Hall Legal Publishers where his supervisors were enthusiastic about his work and eager for him to remain. (See Probation Report at 10). However, in 1976 Mr. Palter decided to return to work at Bucci Imports, where today, he holds a very responsible and demanding position at an annual salary of \$20,000.

Bucci Imports is a small company run by Mr. Burton Palter. At present Scott Palter and his mother, Harriet Palter, are the only employees. Bucci Imports is the United States sales representative to a major Italian shoe manufacturer. As part of Bucci's service to its smaller American customers, Bucci actually imports the shoes from Italy to New York so as to save small shoe stores the burden of dealing with technical customs regulations and the complexity of changing currency rates. Scott Palter is the originator of the importing aspect of the business which accounts for approximately \$120,000 of Bucci's annual gross profits. He, alone, manages and executes the details of importing the shoes and he is the only one in the Palter family with the experience to run this part of the Company's business.

(ii) In January of 1975 Mr. Palter married Denise Van Caem Palter and the couple live in a modest apartment at 150-14 89th Street, Howard Beach, New York. Mrs. Palter is presently a

full-time graduate student in Rehabilitation Counseling at New York University and she is dependent on Mr. Palter for support. While the pendency of the criminal charges has put the marriage under a great strain, it is clear that the couple deeply love and respect one another.

DISCUSSION

ON THE FACTS OF THIS CASE IMPOSITION
OF A TERM OF PROBATION IS APPROPRIATE
AND WOULD SATISFY THE NEEDS OF JUSTICE

The Court of Appeals for the Second Circuit has recently reaffirmed that the criteria to be considered on sentence are "deterrence, retribution, rehabilitation and protection of the public." United States v. Kaylor, 491 F.2d 1133, 1139 (2d Cir. 1974). Application of these standards to the facts of this case establish that a probationary term, pursuant to 18 U.S.C. §3651, is the appropriate sentence.

There can be no dispute that after the traumatic events of the last five months, Mr. Palter has already been deterred from committing any other criminal offense. His involvement in this crime has disrupted his life, threatens his freedom, destroyed his ability to practice law and taxed his marriage. Indeed, the tremendous anxiety engendered by this prosecution alone assures that Mr. Palter, a 29-year old first offender, will never again participate in criminal activity.

Similarly, whatever weight should be given to the criterion of retribution, it is clear that Mr. Palter has already suffered and will continue to suffer "retribution". Moreover, upon imposition of the sentence in this case, Mr. Palter will be automatically disbarred from the practice of law. While, to date, he has not used his license, his active pursuance of a master's degree in taxation indicates that he intended some day to practice law. Of course that opportunity is now lost to him forever.

On the question of rehabilitation, Mr. Palter's behavior since indictment in this case indicates, that he is already well on his way to rehabilitating himself. His complete and total cooperation with the government is demonstrative of his recognition of wrongdoing and his intention to try to compensate for his transgression. Therapy is another strong indication that he is aware of his problems and determined to ameliorate them. As Dr. White notes in her report:

"In treatment, Mr. Palter has begun to consider some of the problems which have driven him throughout his life. A capacity to consider problems intrinsically involves a slowing down in the need to act in order to prove one's effectiveness, no matter how ill-advised the action. To be able to consider the consequences of a possible act and to turn away from rash decisions represents a major positive change in personality. Mr. Palter appears to be moving in this direction, with the likelihood that he will be able in the future to use his considerable talents and intelligence for purposes constructive for himself and society."

Obviously Mr. Palter presents no danger to the public. And, as late Judge Herlands stated: "if....there is a reasonable probability that the defendant will remain at supervised liberty without violating the laws and that the defendant's continuing presence in the community is not incompatible with public policy and public safety, the court should place the defendant on probation." 35 F.R.D. 381, 497 [1964].

The ABA Standards Relating to the Administration of Criminal Justice; Probation §1.3 make clear that decisions as to probation should not turn on the type of offense, but rather on particular facts and circumstances of each case. On the facts of this case Mr. Palter is a particularly suitable candidate for probation. From the early stages of these proceedings, he has provided complete and significant cooperation to the government. The Assistant United States Attorney believes that Mr. Palter's cooperation not only will result in future prosecutions of others but also is responsible for the guilty pleas of his co-defendants. Moreover, Mr. Palter is a first offender whose participation in the instant crime was the result of severe emotional and psychiatric problems. And, he did not profit in any way from his involvement in the scheme.

Finally, probation is appropriate to allow Mr. Palter to satisfactorily resolve the problems in his marriage and to continue his psychiatric therapy already so well underway at this time.

In United States v. Ellenbogen, 390 F.2d 537, 543 (2d Cir. 1968) the Court of Appeals stated in language clearly applicable to this case:

"The clear purpose of [§3651] is to authorize a form of punishment without incarceration which may be utilized by a sentencing judge in a case where he believes the defendant will best be rehabilitated without undergoing actual imprisonment."

On the other hand, any period of incarceration would have disastrous effects on Mr. Palter and the progress of his rehabilitation. Both Dr. White and Dr. Kaplan believe that incarceration would seriously jeopardize Mr. Palter's very survival for they both predicted that he would become actively suicidal.

Dr. White's prognosis bears repeating here:

"In my professional judgment, incarceration in prison will confront Mr. Palter with a very high risk, not only to his psychological rehabilitation, but to his very survival. Given his longstanding vulnerability, both physical and psychological, to the usual assaults and setbacks arising in human relations, the kind of destructive pressures that he will inevitably be subjected to by other prisoners can only catapult him back into chronic depression. Since prisoners' activities cannot be closely controlled on a constant basis, especially given contemporary conditions, I believe there is great probability that Mr. Palter will, as he has often before, seek suicide as a way out of intolerable depression at being the butt of others' cruelty. It is absolutely inevitable that the fact of incarceration itself will only confirm his life-long conviction of hopelessness."

(Exhibit A at 2)

It seems clear that nothing in the history of this case would justify such a risk to Mr. Palter's life.

Respectfully submitted,

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON

Attorneys for DANIEL SCOTT PALTER

By: _____
Sheila Ginsberg

October 27, 1977

Psychotherapeutic Report on: Daniel Scott Palter

Diagnosis and Symptomatology: Chronic depressive reaction with suicidal tendencies, pronounced self-devaluation related to a constitutional predisposition to obesity and a resultant difficulty in consistently using his superior intelligence in the best interests of himself and others.

Treatment and Progress

Mr. Palter, age 29, started psychotherapy with me on August 2, 1977 and has seen me regularly three times a week for a total of 29 sessions through October 27, with the exception of my three-week vacation period from August 15 to September 5. Mr. Palter has been consistent in keeping his appointments and paying for his treatment, thus indicating sustained motivation to overcome the self-destructive tendencies which have almost cost him his life and have brought him into conflict with the law.

The reality of suicide as a way out of seemingly insurmountable difficulties has shadowed Mr. Palter's life ever since his paternal grandfather killed himself. The family tragedy seems to have intensified the depressing atmosphere in which Mr. Palter grew up. His father was away often in connection with the family business, and his mother, who also worked in the business, found herself overburdened with child care and emotional pressures. Mr. Palter's feelings of lonely isolation as a child were greatly complicated by his constitutional predisposition to obesity which made socializing with other children painful and often impossible. In compensation, he turned to books and became a brilliant student. However, he never felt that he satisfied his family's expectations. He became so depressed at feeling like a failure in all areas of

his life that eventually he began to act on his persistent thoughts of committing suicide as his grandfather had done. From the age of 20 to 22, Mr. Palter made several attempts to kill himself with a combination of alcohol and tranquilizers, culminating in an almost fatal attempt with rat poison. These attempts were made in the context of a tormenting love relationship with an hysterical young woman accompanied by vocational disappointments. He has an almost reflex tendency to think of suicide as a solution when he is overwhelmed by feelings of failure.

Throughout high school, college and law school, Mr. Palter struggled with chronic depression, low self esteem and suicidal impulses. He continued to develop his excellent intelligence in order to get some sense of effectiveness as a human being, especially with his peers. In his senior year in college, he was bitterly disappointed when he sought to enlist in the Army and was rejected because of a little known regulation concerning the thickness of the lens in his eyeglasses. He had already served in ROTC in college for several years but this was of no avail. Mr. Palter had planned on going into the Army, feeling that he might as well get killed in military service. In 1969, as he has pointed out, men were being drafted into the Army, who formerly were regarded as unacceptable, but he, once again, felt rejected as unfit. Following his parents' suggestion, he was accepted into law school to his surprise and managed to get a law degree. However, the family contacts he relied upon to help him get a position in law proved unreliable. Burdened by his many defeats in his efforts to feel effective, Mr. Palter gave up trying to become a lawyer, after a number of unsuccessful attempts to get a position.

In the fall of 1972, he went into the family business, on a temporary basis, to replace his mother who had to care for her own ill mother. This transient position developed into a permanent arrangement.

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At this time, however, in 1972, Mr. Palter not only felt disillusioned and suicidal over the collapse of his plans in regard to the Army and law; he was also struggling with the final breakup of his six-year relationship with the hysterical young woman who had driven him to take rat poison. In this hopeless state of mind, he was highly vulnerable to the approaches of friends involved in the drug business whom he met at parties. They saw his wide-ranging intelligence as an asset they could use, and they shrewdly estimated his lifelong need for esteem and friendship. He found himself slipping into dubious business arrangements with them. The chronic depressive has a desperate need to be part of something as a way of preserving life because, to feel like a perpetual outsider, can be an overpowering invitation to suicide.

That he agreed to cooperate with the law in this case indicates that he became able to recognize how his chronic sense of defeat and hopelessness has trapped him into self-destructive illegal activities to prevent killing himself for being a failure in his own eyes and, as he has thought throughout his life, a failure in everyone else's eyes.

Prognosis

2 In treatment, Mr. Palter has begun to consider some of the problems which have driven him throughout his life. A capacity to consider problems intrinsically involves a slowing down in the need to act in order to prove one's effectiveness, no matter how ill-advised the action. To be able to consider the consequences of a possible act and to turn away from rash decisions represents a major positive change in personality. Mr. Palter appears to be moving in this direction, with the likelihood that he will be able in the future to use his considerable talents

and intelligence for purposes constructive for himself and society. Indeed, he has already become an integral and effective contributor to the family shoe importing business which he had joined temporarily in 1972.

In my professional judgment, incarceration in prison will confront Mr. Palter with a very high risk, not only to his psychological rehabilitation, but to his very survival. Given his long-standing vulnerability, both physical and psychological, to the usual assaults and setbacks arising in human relations, the kind of destructive pressures that he will inevitably be subjected to by other prisoners can only catapult him back into chronic depression. Since prisoners' activities cannot be closely controlled on a constant basis, especially given contemporary conditions, I believe there is great probability that Mr. Palter will, as he has often before, seek suicide as a way out of intolerable depression at being the butt of others' cruelty. It is absolutely inevitable that the fact of incarceration itself will only confirm his life-long conviction of hopelessness. On the other hand, if the court were to permit him to continue the treatment, so well under way, that would have the salutary effect of guarding his survival and thus, the opportunity for him to be able to use his considerable capacities for himself and society.

Marjorie Taggart White, Ph.D.
Marjorie Taggart White, Ph.D.

New York State Certified Psychologist
License No. 002029

LAWRENCE I. KAPLAN, M. D.
812 PARK AVENUE
NEW YORK 21, N. Y.

LEHIGH 5-0550

59

August 17, 1977

Phillips, Nizer, Benjamin, Krim & Bal on
40 W. 57th St.
New York, N. Y. 10019

Gentlemen:

RE: Daniel Scott Palter
150-14 89th St.
Howard Beach, N. Y.
Age 29

Herewith is a report of my findings and opinion in the psychiatric evaluation of this patient who was seen on July 12 and July 19, 1977. His parents were interviewed separately in a conference on July 25, 1977.

As you know, Mr. Palter was arrested for the manufacture of amphetamine s and conspiracy in this manufacture and there has been a significant question as to his psychiatric status.

The patient's psychiatric history extends back some time. He was seen in psychotherapy by a female psychiatric social worker in the spring of 1971, and this continued to the end of that year, in California, at the Stanford University Health Clinic. At that time, he was markedly depressed in mood, was actually suicidal, although he was not hospitalized and improved after a while on psychotherapy.

The patient's background is interesting. His mother and father are alive and well and live in Lawrence, N. Y. His father operates an import company, and his mother works with her husband. There is a 24 year old brother who is not working in the family business but elsewhere.

According to the parents, Scott was sent for a New York University profile at the age of only 4½, because he seemed very much ahead of his peers intellectually, and very much behind socially. He always seemed discontent with his social position throughout his subsequent school years although there were never any direct complaints from school concerning his behavior.

In college, he went to Dartmouth, although he wanted to go to Stony Brook, and he ultimately attended law school at Stanford University where he went into a "terrible depression", threatening suicide, and it was not because of his being forced into a law career, because law was his choice and not his parents'.

For some years, according to his parents, he had always had the phobic attitude that if he ever were seen by a psychiatrist he would

be "found out" and "put away."

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The patient wanted to enter the Army and go to Viet Nam but he was turned down on the basis of his physical defects, including his vision and an ankle injury. For some time he was "bugged" by the fact that he was not being accepted for the Armed Forces.

Throughout the interview, and particularly from expressions by his parents, he had had the constant fear that he was "crazy" and would be found out and put away if people really got to know him.

His involvement with the drug industry was also rather bizarre. He divided this into a three period involvement, originally in 1974. and he felt that his involvement then was because he had just gotten over his bad affair, was very depressed and had an extremely low self image. He feels that he did it to embellish his ego and fictionalized a reputation about being a dealer, even though this had never actually occurred, and it was pure fiction which he allowed to persist, maintaining this fiction by going into business with drug involved individuals although his participation was purely on the basis of his "stories" rather than actual knowledge. This involvement lasted only 1 or 2 months and then "fell apart."

During the second period of involvement, in 1975, he was disgusted, frustrated, felt that he was eased out of the family business, became very suspicious and paranoid about people who were dealing with him and had an awful job at Prentice Hall, so that again, apparently out of the necessity to build up his image and make believe that he was a "big man", he again became involved in this business for a period of about 6 months but it again fell apart.

The third occasion in 1977, leading to his arrest, was when he was approached again for money and because he was a "great expert" in the area of this drug manufacture, again, purely a fiction in his mind.

Scott was married in January of 1975, is still living with his wife but their relationship has deteriorated considerably, and its foundation is very rocky.

His personal history is also pertinent in that a paternal grandfather committed suicide, and Scott has entertained the idea that he would "end up the same way." As a matter of fact, he claims that he felt somewhat relieved about his arrest, so that he could "stop the play acting." He is always bad at making friends, suspicious, basically "a loser" and he "can't make it". He feels that he has always had this attitude since childhood. He admits that he is a good student, but he is always "saying and doing the wrong thing." He has very few friends and a very low opinion of himself.

Interestingly enough, although he completed law school in February of 1972, he has never practiced law. He passed the New York bar examination but now works in his father's import company.

There have been some psychosexual difficulties in the sense that he had some homoneurotic experiences in 1970 and 1971. As a matter of fact, his relationship with one of the accused individuals in this current affair, Andy, is somewhat suspicious, although there have been no over sexual relationships. He feels that he "loves him", has a "big affection" for him, and this extends to the point that he would do anything for him. As he put it, he "loves the dude." Comments concerning homoneurotic relationships disturbed him in discussing his relationship with Andy, because he then modified it to indicate that there has been nothing sexual because neither would make the first move, even to an ordinary pat on the back, because it would be "too charged."

In retrospect, Scott feels that his third involvement in 1977 with this drug charge, was totally because of his relationship with Andy, who was unable to manage, "bolluxed up things", and he felt that he had to help him. Andy was desperate, felt as if the world was coming to an end, and begged Scott to help him. On many occasions when Scott wanted to get out and said so, Andy interpreted this as a personal abandonment. Scott's feeling is that he associates with losers as well as being a loser himself and that his associates always think that he is worth more than he actually is.

With regard to potential incarceration, Scott admits the possibility that he could go to prison, but his attitude, expressed without any significant emotional charge, was simply that if he was sentenced to jail "I would kill myself, jump off a 20 or 30 story building, not a bridge because from a bridge I might survive." His attitude was that "being dead would seem better than being alive." Although he has expressed these feelings even now after his arrest, he has recently promised his wife that he would not attempt suicide so that she would not have to stand over him and watch him all the time.

He even thinks that his brother has been right when his brother describes him as a "mad mole shuffling papers in an airless basement."

Throughout this psychiatric contact with Scott, he expressed many fantasies which appeared to be of a grandiose nature, and at the same time his affect was relatively flat and almost detached. It seemed often that he was describing himself as if he was describing a third party, and his description of suicide and depression was also done in a rather totally detached manner. There were no gross delusions or hallucinations as far as could be determined, sensorium was quite clear.

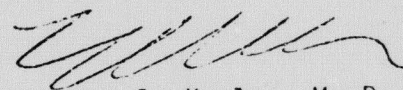
OPINION:

This young man is undoubtedly suffering from a schizo-affective disorder, with characterological manifestations. He has a rather strange and detached affect, is self deprecatory, at the same time that he is grandiose in other areas, and this mixed grandiosity appears to be the result of an obviously disturbed and deficient ego function. His involvement in the charges against him appears to

be the result of a significant and prolonged personality disorder.

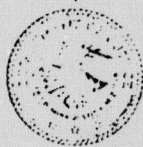
Although there is no overt evidence of psychosis at this time, the prognosis must be seriously guarded, particularly with his history of suicidal depression, as well as a family history of another suicide. I would venture the opinion that incarceration would be a serious threat to this patient's survival, both from the point of view of his psychosexual confusion and his schizo-affective disorder, and would seriously recommend continued supportive psychotherapy. *EB*

Yours very truly,



Lawrence J. Kaplan, M. D.

dm



United States Department of Justice

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UNITED STATES ATTORNEY

DISTRICT OF CONNECTICUT
270 ORANGE STREET
P. O. Box 1824

NEW HAVEN, CONNECTICUT 06508

TELEPHONE 432-2108
AREA CODE 203
FIS: 643-810

IN REPLY REFER TO

HAND DELIVERED

September 27, 1977

Sheila Ginsberg, Attorney at Law
Phillips, Nizer, Benjamin, Krim & Ballon
40 West 57th Street
New York, New York 10019

Re: United States v. Palter, Et al
Criminal No. N 77-8 (D. Conn.)

Dear Ms. Ginsberg:

This letter is being written to you in order to detail the cooperation that has been given to the Government by your client, Daniel Scott Palter. We understand that this letter will be used on Palter's behalf in connection with any disciplinary proceedings by the New York State Bar.

As you will recall, Palter was arrested pursuant to a federal arrest warrant on June 23, 1977. Thereafter, the grand jury sitting at New Haven, Connecticut, returned a two-count indictment on June 30, 1977, charging Palter, Owen Bradley Davies and Andy Castro with manufacturing amphetamines, in violation of Title 21, United States Code, Section 841(a)(1), and with conspiracy to manufacture amphetamines and methaqualone, in violation of Title 21, United States Code, Section 846. On July 13, 1977, we met in this office and the Government made disclosure of the evidence available to it. Immediately thereafter, without filing any formal motions, Palter agreed to cooperate fully with the Government and to enter a plea of guilty to one count of the indictment. The Government agreed to make the full extent of Palter's cooperation known to the sentencing judge.

Palter has met with both the undersigned and with agents of the Drug Enforcement Administration on several occasions. At these meetings, Palter has detailed fully not only his own participation in the manufacture of amphetamines, but also the participation of the other defendants. He also detailed the participation of certain other individuals, not named as defendants in the indictment, whose identity was unknown to the Government prior to Palter's cooperation. We believe that Palter's disclosures have been complete, truthful and candid.

2. Sheila Ginsberg, Attorney at Law

September 27, 1977

Re: United States v. Palter, Et al

Based primarily upon the statements that Palter has given to the Government, the other two defendants in this case, Davies and Castro, have made decisions to enter pleas of guilty to the charges pending against them. We believe that without Palter's cooperation, these defendants may well have decided to go to trial on these charges. As you know, Palter's statements and cooperation with the Government have substantially strengthened the Government's case against his codefendants.

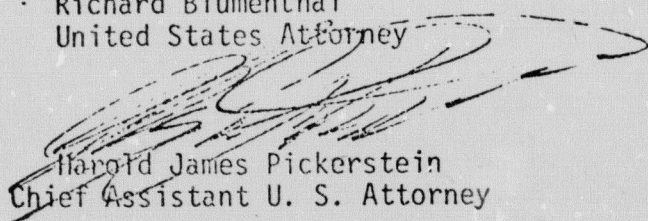
Additionally, Palter's cooperation has given the Government information, hitherto unknown, concerning other individuals who were involved with these defendants both in the manufacture and distribution of controlled substances. We believe that his cooperation will give rise to other cases against these individuals.

There is no question but that Palter has given his full and truthful cooperation to the Government. Not only has he provided additional significant evidence against both Castro and Davies, but he has also provided significant evidence against others, whose very existence was unknown to the Government before Palter began cooperating.

We further believe that based upon the evidence available to the Government in this case, Palter's involvement in these actions was based primarily out of his friendship with the other codefendants, and was not based upon a venal motive. Indeed, from all of the evidence available to us, it appears that Palter did not profit at all from his involvement in this matter.

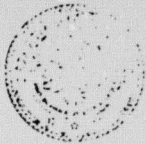
Sincerely,

Richard Blumenthal
United States Attorney



Harold James Pickerstein
Chief Assistant U. S. Attorney

HJP/hmg



United States Department of Justice

65

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
270 ORANGE STREET
P. O. Box 1824
NEW HAVEN, CONNECTICUT 06508

TELEPHONE 432-2106
AREA CODE 203
FTR: 443-8108

IN REPLY REFER TO

HAND DELIVERED

September 27, 1977

Phillips, Nizer, Benjamin, Krim & Ballon
40 West 57th Street
New York, New York 10019

Attention: Sheila Ginsberg
Attorney at Law

Re: United States v. Daniel Scott Palter
Criminal No. N 77-89 (U.S.D.C. D. Conn.)

Gentlemen:

This letter is to confirm our agreement with respect to the disposition of the criminal charges that are now pending against your client, Daniel Scott Palter.

It is understood that Palter will enter a plea of guilty to one count of the two-count indictment (Criminal No. N 77-89) that is now pending against him in the United States District Court for the District of Connecticut. Palter will enter a plea of guilty to either Count 1 or Count 2 of the indictment; the Government agrees that upon entry of this plea, and its acceptance by the Court, at the time of sentencing the remaining count will be dismissed.

It is further understood that Palter will give his full cooperation to the Government, such cooperation to include, at the very least, his truthful testimony against Andy Castro and Owen Bradley Davies, defendants in the above-captioned case. Additionally, Palter's cooperation is to include complete and truthful information and testimony as to his activities with respect to the manufacture and distribution of controlled substances, encompassed within the period of the indictment. It is expressly understood that the extent of Palter's cooperation, if any, is to be made known by the Government to the sentencing judge.

2. Phillips, Nizer, Benjamin, Krim & Ballon

September 27, 1977

Attn.: Sheila Ginsberg
Attorney at Law

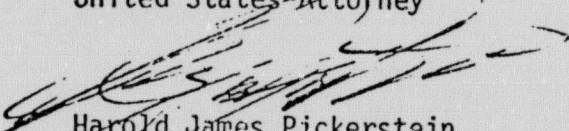
Re: United States v. Daniel Scott Palter

It is expressly understood and agreed that with the exception of the agreement of the Government to dismiss one count of the indictment now pending against Palter in return for his plea of guilty to the other count, and the agreement of the Government to make Palter's cooperation, if any, known to the sentencing judge, no other promises, understandings or agreements have been made to Palter or his attorneys by any agent, officer or employee of the United States Government.

If Daniel Scott Palter fully cooperates as outlined above and makes truthful and complete disclosures of all requested information he possesses concerning the manufacture and distribution of controlled substances, the United States will not prosecute him for any offense other than the aforementioned one count of indictment, Criminal No. N 77-89 for or on account of any transaction, matter or thing concerning which he has testified to or given information to the Government, nor shall such testimony or information be used as evidence against him in any court.

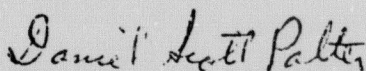
Very truly yours,

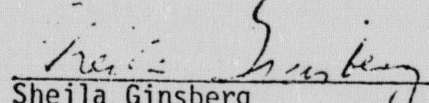
Richard Blumenthal
United States Attorney


Harold James Pickerstein
Chief Assistant U. S. Attorney

HJP/hmg

I have read the within and foregoing letter; I understand its contents, and I agree to everything set forth therein.


Daniel Scott Palter
Defendant


Sheila Ginsberg
Counsel for Defendant

Bridgeport
November 23, 1977

MEMORANDUM

TO: The Honorable Robert C. Zampano
Senior U. S. District Court Judge
New Haven

FROM: David W. Pond
U. S. Probation Officer
Bridgeport

RE: Daniel Scott Palter
Criminal No. N-77-89

Your Honor:

I have investigated the aspect of service of sentence in interrupted periods, i.e., weekends, as requested by the Court at the time of disposition in this case.

Legal counsel for the Bureau of Prisons has indicated that there appears to be no legal authority which would allow for weekend sentences but, in practice, they are routinely imposed according to prison officials. The Metropolitan Correctional Center in New York City has several such sentences being served by inmates at the present time.

Concerning the availability of psychological services to inmates at the MCC, I was advised that they have a full-time psychiatrist and a psychologist on duty at all times. Although ongoing therapy sessions would not be possible, the medical/supportive staff would be available to Mr. Palter in case of emergency (in re. severe periods of depression and in case of any suicide attempts).

In view of the short term of incarceration imposed in this case, and in comparison to the lengthier sentences meted out to co-defendants Davies and Castro, I recommend that the Judgment in Palter's case remain intact, as imposed on November 21, 1977. In addition, after discussing this matter

The Honorable Robert C. Zampano
Senior U. S. District Court Judge
New Haven

-2-

Re: Daniel Scott Palter
Criminal No. N-77-89
November 23, 1977

with United States Marshal Anthony Dirienzo, we recommend that the defendant be ordered to surrender within two weeks to the U. S. Marshal's Office in the Southern District of New York.

This memorandum has been discussed and reviewed at length with Supervising U. S. Probation Officer Tom Rendino, and he concurs with this recommendation.

BCC: Atty. Sheila Ginsberg
New York, NY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----x
UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

DANIEL SCOTT PALTER, :

Defendant. :

-----x

AFFIDAVIT

N 77-89

STATE OF NEW YORK)

COUNTY OF NEW YORK)

SHEILA GINSBERG, being duly sworn, deposes and says:

I am an attorney associated with Phillips, Nizer, Benjamin, Krim & Ballon, attorneys for the defendant, Daniel Scott Palter, in the instant matter. I make this affidavit in support of the defense request to permit Mr. Palter to serve his sentence, a four-month period of incarceration, on weekends.

This relief has been requested in light of the predictions of a psychiatrist and a treating psychologist that incarceration threatens disastrous consequences to Mr. Palter's life. (The reports of Dr. Marjorie T. White and Dr. Lawrence Kaplan are Exhibit A and B to the November 17, 1977 sentencing memorandum, respectively.) The prognosis in the reports of both doctors is

that a period of incarceration will create substantial risk to Mr. Palter's survival because his history and particular vulnerabilities indicate that he may, as he has before, seek suicide as an escape from intolerable depression. Dr. Kaplan concluded:

"Although there is no overt evidence of psychosis at this time, the prognosis must be seriously guarded, particularly with his history of suicidal depression, as well as a family history of another suicide. I would venture the opinion that incarceration would be a serious threat to this patient's survival, both from the point of view of his psychosexual confusion and his schizo-affective disorder, and would seriously recommend continued supportive psychotherapy."

(Appendix B at 4)

Similarly, Dr. White found that:

"In my professional judgment, incarceration in prison will confront Mr. Palter with a very high risk, not only to his psychological rehabilitation, but to his very survival...It is absolutely inevitable that the fact of incarceration itself will only confirm his life-long conviction of hopelessness."

(Appendix A at 4)

Dr. White, in a letter to this Court dated December 1, 1977, and submitted herewith, reiterates her belief that incarceration would seriously jeopardize Mr. Palter's mental and physical health:

"In my original report I focused at length on the catastrophic effect I feared that a period of incarceration would have on Mr. Palter's mental stability and physical health. In the interim -- I have seen Mr. Palter an additional ten sessions -- nothing has happened to alter my judgment in this regard. On the contrary, it has been re-enforced.

Since the date that sentence was imposed, I have observed the traumatic effect of the pending prison term on Mr. Palter's mental and emotional state. I feel compelled to reassert to Your Honor the belief that a period of incarceration may jeopardize Mr. Palter's very survival."

While Your Honor's recommendation of the Metropolitan Correctional Center ("MCC") as the institution where Mr. Palter will serve his sentence alleviates some of Dr. White's earlier concerns, many remain. Although MCC is a modern facility, it is, nonetheless, a prison with very tight security* and consequently imprisonment for the four-month term is likely, in Dr. White's words, to confirm Mr. Palter's "life-long conviction of hopelessness". (Exhibit A to the sentencing memorandum at 4). Moreover, and of primary concern to Dr. White is the fact that incarceration will deprive Mr. Palter of an ongoing course of treatment. During the last several months Mr. Palter has finally been forced to confront his severe psychiatric problems and, as a result, he has been able to overcome the very real fears that have, in the past, prevented him from seeking psychiatric help. Dr. Kaplan reported that Mr. Palter had previously avoided therapy because of his phobia that he would be "'put away'". (Exhibit B at 1-2) All psychiatric evaluations of Mr. Palter emphasize that treatment is critical to Mr. Palter's ability to retain his emotional stability.

*See United States of America ex rel. Louis Wolfish, et al. v. Levi, et al. (75 Civ. 6000) Opinion of September 15, 1977 (Frankel, D.J.)

Unfortunately, MCC does not have the facilities to provide Mr. Palter with any therapeutic course of treatment. Consequently, should he be incarcerated for a continuous four-month period, the result will be a hiatus in his therapy for that period of time. Dr. White predicts that a cessation of treatment for four months will "virtually destroy" the progress Mr. Palter has already made.

The dangers of this regression and the denial of supportive therapy are readily apparent. Indeed, the Probation Department Report* acknowledges that in Mr. Palter's case a suicide attempt is a realistic possibility which merits consideration. In this context, however, there is little comfort in the Probation Department assurance that MCC has a sufficient medical staff to cope with an emergency should Mr. Palter attempt suicide. Moreover, even this assurance is premised on inaccurate information. It is my understanding that testimony in United States ex rel. Wolfish v. Levi, (75 Civ. 6000) (the case challenging the conditions at MCC) established that at present the only psychiatrist available at MCC is working on a consulting basis -- not full time -- and is only at the institution for 20 hours a week.**

Permitting Mr. Palter to serve his sentence on successive weekends would avoid many of the documented hazards to him of a straight four-month sentence. He would be able to continue his

* A Copy of the November 23, 1977 Probation Department Report was mailed to me by the Probation Officer.

**On November 22, 1977 Dr. Naomi Goldstein testified to this effect in a hearing before Magistrate Schreiber.

therapy with Dr. White on their schedule of three times weekly, and he would be able to re-enforce this treatment by the ability to work and support himself and his wife during weekday release.*

Moreover, as Dr. White notes in her December 1, 1977 letter, interrupting periods of incarceration with periods of release will have a salutary effect of defusing the mounting pressures likely to build during a continuous period of imprisonment. Similarly, Mr. Palter can use the periods of release to prepare himself to deal, each weekend, with incarceration.

In this regard, it is respectfully submitted that this Court should not view the service of sentence on the weekends as more lenient than a straight four-month term. Nor would weekend service depreciate the seriousness of the offense involved here. Mr. Palter would still have to serve the equivalent of a four-month term, but instead it would take him substantially longer to do so. As a consequence, should Your Honor grant this relief, Mr. Palter will have to live for an extended period of time with the reality of incarceration as a regular part of his life, and certainly, from a penal standpoint, he would be punished because

* The ability to work at Bucci Imports, Inc. will have more than therapeutic value. I have recently learned from Mr. Palter's parents that his father suffers from extreme high blood pressure and a severe neurological disorder. As set forth in my original sentencing memorandum, Scott Palter and his mother are the only employees in this family-run corporation. Scott's position in the company is a responsible and demanding one, and in view of his father's illness, his daily presence is very important to the daily functioning of the firm.

at the end of each week he would have to anticipate going to jail.

The Probation Department acknowledges in its report that weekend sentences are routinely imposed by judges in the District Court. All of my information confirm this to be the case. Specifically, I have learned in a telephone conversation with Larry F. Taylor, the Warden at MCC, that at present at least 24 persons are serving their sentence on weekends under the jurisdiction of MCC. Further, Warden Taylor has assured me that many of these sentences are for periods longer than four months and consequently, there would be no problem with Mr. Palter serving his sentence in that manner. Indeed, in view of the current litigation (United States ex rel. Wolfish v. Levi (75 Civ. 6000) challenging, inter alia, the overcrowded conditions at MCC, a sentence which directs weekend service would at least not contribute to the overcrowding.

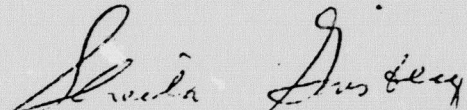
Finally, I feel compelled to address the Probation Department's recommendation that Mr. Palter's sentence should be left intact because the sentences imposed on the co-defendants are more severe. The length of the sentences meted out to Owen Davies and Andy Castro are irrelevant to the question of whether Mr. Palter's psychiatric condition mandates that he serve his sentence in a manner not destructive of his mental stability. Moreover, comparison with the sentences of the others, is, I

believe, unfair and improper. Mr. Palter's psychological problems and his conduct, both during the crime and during the prosecution of this case, dramatically distinguish him from his co-defendants. It was his cooperation alone which resulted in the guilty pleas entered by Mr. Davies and Mr. Castro. Moreover, his involvement in the crime, as opposed to that of Davies and Castro, was motivated, as the government acknowledged, by friendship and not venality. In fact, as Assistant United States Attorney Pickerstein has already informed this Court, Mr. Palter, unlike his co-defendants did not profit from his involvement in the conspiracy.

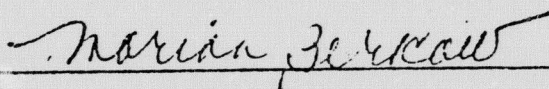
It is respectfully submitted that in view of Mr. Palter's severe psychiatric problems, the alternative of weekend service of the four-month sentence is particularly appropriate. Weekend service would reduce the risks that a straight period of incarceration would present to Mr. Palter's survival. Simultaneously, it would allow Mr. Palter to continue a critical course of therapy that has already had beneficial effect and is essential to his future stability.

For the foregoing reasons, and the reasons set forth in the psychotherapeutic reports of Dr. Kaplan and Dr. White, as well as Dr. White's December 1, 1977 letter to this Court, Mr.

Palter should be permitted to serve his four-month sentence on the weekends under the jurisdiction of the Metropolitan Correctional Center.


SHEILA GINSBERG

Sworn to before me this
12th day of December, 1977.



MARION BERKOW
NOTARY PUBLIC, State of New York
No. 24-0261460
Qualified in Kings County
Commission Expires March 30, 1979

SIRS: TAKE NOTICE that the within is a
copy of an
this day entered herein in the office of the Clerk
of the
....., 19
Dated, New York 19
Yours, etc.
PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for
40 West 57th Street
New York, N. Y. 10019
TO:
Attorney for
.....
SIRS: TAKE NOTICE that the within is a
copy of an order which will be presented for
settlement to the Hon.
.....
at Term
.....
in the County of
on the day of
19 at o'clock in the forenoon.
Dated, New York 19
Yours, etc.
PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for
40 West 57th Street
New York, N. Y. 10019
TO:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

- against -

DANIEL SCOTT FALTER,

Defendant.

AFFIDAVIT

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
40 WEST 57TH STREET
NEW YORK, N. Y. 10019
(212) 977-9700

Attorneys for Defendant

Marjorie Taggart White, Ph. D.

300 CENTRAL PARK WEST

NEW YORK, N. Y. 10024

877-9303

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December 1, 1977

The Honorable Robert C. Zampano
U.S. District Court Judge
c/o Mrs. Sheila Ginsberg
Phillips, Nizer, Benjamin, Krim & Ballon
40 West 57th Street
New York, New York 10019

Re: Daniel Scott Palter

Dear Judge Zampano:

I am writing to you in connection with my patient, Mr. Palter, on whom I submitted a psychotherapeutic report on October 27, 1977 at the request of Mr. David Pond, the United States Probation Officer. I have learned from Mr. Palter that on November 21, 1977, Your Honor sentenced him to a four-month period of incarceration but that you are presently considering the alternative of permitting Mr. Palter to serve his sentence on successive weekends. I am taking this opportunity to urge most strenuously that Your Honor grant this relief.

In my original report I focused at length on the catastrophic effect I feared that a period of incarceration would have on Mr. Palter's mental stability and physical health. In the interim -- I have seen Mr. Palter an additional ten sessions -- nothing has happened to alter my judgment in this regard. On the contrary, it has been re-enforced. Since the date that sentence was imposed, I have observed the traumatic effect of the pending prison term on Mr. Palter's mental and emotional state. I feel compelled to reassert to Your Honor the belief that a period of incarceration may jeopardize Mr. Palter's very survival.

In addition to the concerns that I have already expressed, I believe that Mr. Palter's progress in therapy would be virtually destroyed by a continuous four-month period of incarceration. During the last several months, Mr. Palter has been increasingly able to examine his deep self-destructive tendencies which have driven him to near-fatal attempts on his own life and to a conflict with the law. As a result,

- 78 -

the paralyzing terrors have considerably diminished which, in the past interfered with his getting the psychotherapeutic help he so desperately needed. Thus, therapy, long overdue, is finally underway.

If Mr. Palter should be incarcerated for four months, his treatment would be interrupted for that period of time. I understand that there are no facilities at the Metropolitan Correctional Center to provide Mr. Palter with any ongoing therapy, and even if there were, it has been my long-standing professional experience that effective psychotherapeutic treatment is a highly personal matter and therapists are not readily interchangeable. It takes time for a therapist and patient to establish the necessary lines of communication and to develop the trust essential to treatment. Mr. Palter and I have already begun to do that, and disruption of the therapy at this time can only result in cancelling out the progress we have already made. The even more sinister danger is the great probability of Mr. Palter's becoming the butt of the prisoners' cruelty and turning to suicide again as a way out of intolerable conflict.

On the other hand, if Mr. Palter were permitted to serve his sentence on the weekends, he would be able to continue his much-needed therapy. Moreover, periods of incarceration which are interspersed with periods of release will, in my judgement, minimize the disastrous effects of a prison term. The ability to continue his therapy with me and to lead a relatively normal life on weekdays would better equip Mr. Palter to deal with incarceration on the weekends. While I maintain my strong reservations about the advisability (given his life-long self-destructive drive) of any incarceration imposed on Mr. Palter, permitting him to serve his sentence on the weekends would at least reduce the risk to Mr. Palter's survival. ①

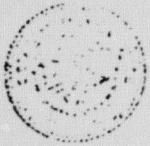
If Your Honor has any questions or in any way wishes me to provide further assistance in this matter, I am, of course, available.

Very truly yours,

Marjorie Taggart White, Ph.D.

Marjorie Taggart White, Ph.D.
New York State Certified Psychologist
License No. 002029

MTW/3



United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF CONNECTICUT
270 ORANGE STREET
P. O. Box 1824

NEW HAVEN, CONNECTICUT 06508

80

TELEPHONE 432-2108
AREA CODE 203
FIS: 643-8108

IN REPLY REFER TO

November 30, 1977

Honorable Robert C. Zampano
United States Senior District Judge
141 Church Street
New Haven, Connecticut 06510

Re: United States v. Palter, Et al
Criminal No. N 77-89

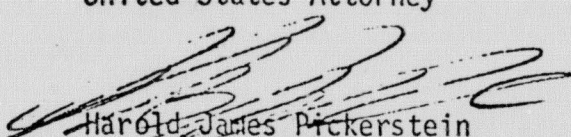
Dear Judge Zampano:

When the Court imposed sentence on the defendant Daniel Scott Palter in the above-captioned case on November 21, 1977, counsel for Palter requested that service of the sentence at the Metropolitan Correctional Center in New York be on weekends. The Court reserved ruling on this request.

The Government has no objection to the service of Palter's sentence on weekends at the Metropolitan Correctional Center in New York. We do not take issue with the position of the defendant that such a sentence would enable the defendant to continue his psychiatric therapy without depreciating the severity of the sentence or the offense.

Respectfully,

Richard Blumenthal
United States Attorney


Harold James Pickerstein
Chief Assistant U. S. Attorney

HJP/hmg

cc: Sheila Ginsberg, Attorney
Phillips, Nizer, Benjamin, Krim & Ballon
40 West 57th Street
New York, New York 10019

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEC 5 3 25 PM '77

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. N-77-89
 :
 DANIEL SCOTT PALTER :

RULING ON MOTION TO SERVE SENTENCE ON WEEKENDS

On November 21, 1977, this Court sentenced the defendant, Daniel Scott Palter, to a term of incarceration of 4 months, to be followed by a 2-year special parole term, after his plea of guilty to a charge of conspiracy to manufacture Schedule II non-narcotic substances. Following the imposition of sentence, the defendant orally moved for permission to serve his sentence on weekends. The motion is denied.

The defendant shall surrender himself to the United States Marshal, Southern District of New York, Foley Square, New York, New York, on December 12, 1977, to commence service of the 4-month sentence of incarceration.

Dated at New Haven, Connecticut, this 5th day of December, 1977.

Robert C. Zampano
United States District Judge

Affidavit of Service by Mail

In re:

USA v David Scott Palter

State of New York
County of New York, ss.:

.....
Harry Minott

being duly sworn, deposes and says, that he is over 18 years of age.

That on MAR 3 - 1978, 197....., he served 1 copy of the
within Appendix

in the above-named matter on the following counsel by enclosing said
1 copy in a securely sealed postpaid wrapper addressed as follows:

James Pickerstein, Esq.
Chief Assistant U.S. Attorney
United States Department of Justice
District of Connecticut
270 Organe Street
P.O. Box 1824
New Haven, Connecticut 06508
Attorney for Respondent

Andrew Bowman, Esq.
Office of the Public Defender
770 Chapel Street
New Haven, Connecticut 06510
Attorney for Respondent

~~and depositing same in the official de-
pository under the exclusive care and
custody of the United States Post
Office Department within the City of
New York.~~

and depositing same at the Post Office
located at Howard and Lafayette
Streets, New York, N. Y. 10013.

Harry Minott

Sworn to before me this 3rd
day of March, 1978

Jack A. Messina

JACK A. MESSINA
Notary Public, State of New York
No. 30-2673500
Qualified in Nassau County
Cert. Filed in New York County
Commission Expires March 30, 1979

